

SENSITIVE

Manl-ID: MAOPP1 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 1

13-13.1 Moved to 13-14.1

13-13.2 Moved to 13-14.2

13-13.3 Moved to 13-14.3

13-13.4 Moved to 13-14.4

13-13.5 Moved to 13-14.5

13-14 DISCIPLINARY PROBATION (FORMERLY 13-13) (See MAOP, Part I, 1-30.3, 8-1.12.2.)

Disciplinary probation is a corrective and/or punitive procedure (which may be imposed with censure and/or suspension when so dictated by the factual situation) to closely monitor an employee's performance with intent to provide counsel and correction during a specified period of time. During the disciplinary probation period, a denial of certain employee benefits may be imposed.

13-14.1 Purpose of Disciplinary Probation (Formerly 13-13.1)

To provide the employee with notice that the particular area of inefficiency, delinquency, or poor judgment, etc., will be afforded close scrutiny for a specified period of time. During the period of disciplinary probation, the employee is expected to make a concerted effort to improve in the deficient area.

13-14.2 Length of Disciplinary Probation (Formerly 13-13.2.)

The length of the disciplinary probation period is flexible and will be determined by the Director or Director's delegated representative. In most cases the original disciplinary probation period will be 90 days for Special Agents and 60 days for support employees.

13-14.3 Effects of Disciplinary Probation on Employee (Formerly 13-13.3)

During the period of disciplinary probation an employee:

- (1) Will not be promoted from one GS or Wage Board level to another;
- (2) Will not be considered for advancement within the Executive Development and Selection Program of the Bureau;
- (3) Will not be considered for a Personnel Resource List Transfer;
- (4) May have a promotion delayed for a period of time not to exceed the period of disciplinary probation if the action occurred during the preceding 12 months and has not been offset by a strong favorable recommendation for promotion from the employee's superior. The final determination will be made by the Personnel Officer at FBIHQ.

SENSITIVE

13-14.4 Application of Disciplinary Probation (Formerly 13-13.4.)

An employee will be placed on disciplinary probation only when the cause for administrative action is work performance related or work-related.

- (1) Work performance considers the technical competence aspect of an employee.
- (2) Work-related action involves judgment, common sense, and the impact the cause has on the public's perception of the FBI.

13-14.5 Removal from Disciplinary Probation (Formerly 13-13.5)

(1) At the expiration of a disciplinary probation period, the Administrative Summary Unit, Personnel Division, will activate a computer entry into the Bureau's Personnel Management System to remove the employee from probation. No paperwork will be involved on the part of the SAC/AD or FBIHQ for this process to occur. However, should the SAC/AD choose to recommend that an employee remain in a probationary status due to continued deficiency in the area for which the employee was disciplined, the Administrative Summary Unit should be telephonically advised just prior to the end of the period, followed by an appropriate communication detailing the basis for same. It is important that a tickler be set in the respective divisions so this matter can be followed closely.

(2) As a guideline in recommending that an employee in a probationary status be continued in this status, the employee must continue to be deficient in the area for which they had been initially disciplined. If the employee is deficient in another area, this would not be sufficient justification to continue the initial probationary status. If additional problems are identified, the SAC/AD should seriously consider recommending an additional disciplinary action to address the other deficient areas, whether it be performance or conduct related.

SECTION 14. APPEALS AND GRIEVANCES

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14-1 INTRODUCTION

(1) The FBI has always attempted to anticipate and avoid possible sources of employee discontent or grievances by following fair and objective policies, uniformly applied to all. To detect and solve grievances which might arise, the FBI depends upon the alertness of its supervisors and officials.

(2) The FBI is confident that its indoctrination and training programs ensure that each employee is fully aware that any grievance should be brought to the attention of their supervisor so that the matter may be discussed, explained and resolved. All employees should be aware that their division head or Special Agent in Charge is always available for further discussion with them of any problem which cannot be handled satisfactorily on the supervisory level; and that any problem which cannot be resolved satisfactorily on any lower level may be brought to the Director's attention in writing, or may be presented orally to an appropriate Bureau official.

(3) Other means by which employees may present their problems include the suggestion program or contact with the inspectors who periodically inspect each division or field office. In addition, certain formal procedures exist as set out in the subsections below.

**EffDte: 02/28/1991 MCRT#: 0 Div: D3 Cav: SecCls:

14-2 CONTESTING PERFORMANCE APPRAISALS

(See Part I, Section 5 of this manual.)

**EffDte: 02/28/1991 MCRT#: 0 Div: D3 Cav: SecCls:

14-3 POSITION CLASSIFICATION

Position classification decisions may be appealed in accordance with provisions of Title 5, Code of Federal Regulations, Chapter 1, Part 511. Supervisors should be alert for situations in which it appears an employee may be considering an appeal. Experience has shown that if a supervisor carefully explains to an

SENSITIVE

Man1-ID: MAOPP1 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 1

employee the basis for a given classification action misunderstandings are averted. If difficulty persists in a given case, it may be feasible to take administrative steps, such as readjustment of work assignments, to eliminate it. FBIHQ should be notified of problems which resist settlement. If need arises, FBIHQ will furnish, upon request, the necessary instructions for filing classification appeals.

**EffDte: 02/28/1991 MCRT#: 0 Div: D3 Cav: SecCls:

14-4 APPEAL RIGHTS

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| 14-4.1 | Appeal Rights of Preference Eligible Employees Regarding Adverse Actions

| Pursuant to Title 5, United States Code (USC), Section
| 7511, "preference eligible" employees (e.g., certain veterans) who
| have completed one year of current continuous service in the same or
| similar positions with an agency may have certain procedural rights
| when an adverse action is proposed or taken against them. For the
| purposes of this manual, an "adverse action" involves removal,
| suspension for more than 14 days, reductions in grade or pay, or a
| furlough of 30 days or less. (See MAOP, Part I, 13-10, 13-13(3) &
| 14-4.2.)|

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14-4.2 Appeal Rights in General (See MAOP, Part 1, 8-1.11 and 13-13.)

(1) This subsection provides a general overview of the appeal rights of an employee when there is an administrative action of a disciplinary nature. For a discussion of the additional rights of a preference eligible employee when there is an adverse action, see MAOP, Part 1, 13-10 and 14-4.1. For the purposes of this manual, an adverse action is removal, suspension for more than 14 days, reduction in grade or pay, or a furlough of 30 days or less. For a discussion of an employee's rights when there is a proposal for the employee to be reduced in grade or removed for unacceptable performance, see MAOP, Part 1, 5-4.7 and 5-4.7.1.

(2) Recommendations for adverse actions are made by a field office, headquarters division or the inspection staff and forwarded to the Office of Professional Responsibility (OPR). The matter is reviewed in the Administrative Services Division or OPR and a decision recommended. If, following review of the matter by the

SENSITIVE

SENSITIVE

Man1-ID: MAOPP1 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 1

Assistant Director of the OPR, it is determined that administrative action is warranted, the action is taken and the employee notified. The action taken (or determination made) by the Assistant Director of the OPR is subject to review by the Deputy Director. If the proposed disciplinary action is against a member of the FBI's Senior Executive Service (SES), below the rank of Assistant Director, or an ASAC, the Deputy Director would determine whether an administrative action is warranted. The action taken by the Deputy Director is subject to review by the Director. If the proposed disciplinary action is against an Assistant Director or the Deputy Director, the Director would determine whether an administrative action is warranted. The actions taken by the Director with regard to an Assistant Director or Deputy Director are subject to review by the Deputy Attorney General.

(3) If the employee has not completed his/her probationary period of employment which began when the employee entered on duty, he/she will be notified that he/she has no right to appeal the action within the FBI (see MAOP, Part 1, 21-8). If the employee has completed the probationary period, the employee will be notified that he/she may appeal the action to the next level of authority for appeals. Should an employee who has completed his/her probationary period be concerned about other administrative actions taken against him/her short of adverse action, with the exception of oral reprimands and letters of censure, the employee may express this concern, through channels, to his/her SAC, Assistant Director, office head, or the Personnel Officer. In a case where disciplinary action was taken by an SAC, Assistant Director, office head, or the Personnel Officer, the appeal will be handled by the Assistant Director, Administrative Services Division. When disciplinary action is taken against SES members or ASACs, the Deputy Director is the action authority. The Director is the final appeal authority for disciplinary actions taken by the Deputy Director. Appeals must be received within 30 calendar days after the effective date of the disciplinary action. Thereafter, nonpreference eligible FBI employees in the excepted service do NOT have a right to appeal a disciplinary action to the Merit Systems Protection Board (MSPB). A "preference eligible" employee who has completed one year of current continuous service in the same or similar positions in an agency, in addition to being able to appeal a disciplinary action as indicated above, may also appeal an "adverse action" (e.g., removal, suspension for more than 14 days, reduction in grade or pay) to the MSPB. As a general matter, appeals to the MSPB by preference eligible employees are to be filed within 30 days after the effective date of the adverse action. (See SAC Memorandum 11-90 dated April 20, 1990, and MAOP, Part 1, 13-2(4) and 13-10, regarding the handling of offenses by SACs and Assistant Directors.)

(4) With the exception of the reference to the appeals rights of preference eligible employees in regard to the MSPB, the rights discussed in this section are not required by statute or regulation and should not be construed to indicate or imply that nonpreference eligible employees in the excepted service have a property interest in their employment such as in the form of an expectation of continued employment with the FBI. (See MAOP, Part I, 13-1(5) & 21-1.)

SENSITIVE

SENSITIVE

Man1-ID: MAOPP1 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 1

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14-5 CIVIL SERVICE REFORM ACT (PUBLIC LAW 95-454)

**EffDte: 04/27/1990 MCRT#: 0 Div: D3 Cav: SecCls:

14-5.1 Public Law 95-454

Public Law 95-454 provides the authority to grant grade retention for a period of 2 years and the authority for granting indefinite pay retention when an employee is demoted through no fault of his/her own. This is provided the demotion is not due to personal cause based upon conduct, character or inefficiency or at the employee's own request or consent.

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14-5.2 Requirement for Grade Retention

When an employee is demoted to a position which is lower graded than the position held immediately prior to demotion, as a result of a reduction-in-force or as a result of a reclassification process, he/she may qualify for grade retention. To qualify, the employee must have had served 52 consecutive weeks in the same agency in a grade or grades higher than the one to which demoted, and the position which is being reduced has to have been classified at the higher grade for a continuous period of at least one year immediately before the reduction.

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14-5.3 Requirement for Pay Retention

Pay retention shall apply to an employee whose rate of basic pay would otherwise be reduced as the result of the following: the expiration of a two-year period of grade retention; a reduction-in-force when the employee does not meet the eligibility requirements of grade retention; the reduction or elimination of scheduled rates; placement of an employee into a nonspecial rate position or into a lower special rate position from a special rate position; placement of an employee in a position in a lower wage area or in a position in a different pay schedule; or the placement of employee in a formal employee development program (upward mobility).

SENSITIVE

**EffDte: 04/27/1990 MCRT#: 0 Div: D3 Cav: SecCls:

14-5.4 Appeals

The denial of grade or pay retention benefits can be appealed under some circumstances. See Title 5, Code of Federal Regulations, Chapter 1, Part 511, for appeal rights.

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14-5.5 Temporary Promotion or Reassignment

Employee's entitlement to grade or pay retention is not affected by a temporary promotion or temporary reassignment. However, an employee serving under a temporary promotion or temporary reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment.

**EffDte: 03/28/1989 MCRT#: 0 Div: D3 Cav: SecCls:

14-5.6 Wage Board Employees

Similar salary retention provisions apply to Wage Board employees.

**EffDte: 03/28/1989 MCRT#: 0 Div: D3 Cav: SecCls:

| 14-6 WITHIN-GRADE INCREASE |(See MAOP, Part 1, 8-8.6)|

(1) An employee who is denied a within-grade increase because of failure to perform at an acceptable level of competency may request reconsideration of the Bureau's action by filing a written request within 15 calendar days after receiving the denial notification.

(2) If the employee files a request for reconsideration, FBIHQ will establish a reconsideration file containing all pertinent documents relating to the negative determination and the request for reconsideration. This file will be made available to the employee and/or his/her personal representative for review.

SENSITIVE

Manl-ID: MAOPP1 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 1

(3) If the negative determination is sustained after reconsideration, the employee will be informed in writing of the reasons for the decision and that he/she has the right of appeal to the Merit Systems Protection Board (MSPB) within 30 days of receipt of the notification. An employee can only appeal to the MSPB if he/she requests internal reconsideration of the WIGI denial first.

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14-7 SUPPORT PROMOTION AND PLACEMENT

Refer to MAOP, Part I, Section 7-7.

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***** END OF REPORT *****

SENSITIVE